

REMARKS**Double Patenting Rejections**

The Office Action states that the terminal disclaimers filed in conjunction with Applicants' last response dated March 20, 2006 were not accepted because "[a]n attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity." Office Action at page 3. Applicants respectfully submit that the terminal disclaimers filed were proper, because they were accompanied by a listing of Patent Practitioners to be Recognized Under 37 CFR §1.32(c)(3) as Being of Record. That listing included a request to recognize the undersigned attorney, who is also the attorney that signed the terminal disclaimers.

Applicants respectfully request that the Examiner reconsider the terminal disclaimers filed March 20, 2006. If a supplemental listing of Patent Practitioners to be Recognized is required, Applicants will submit one at a later date.

Rejections Under 35 USC §103(a)***Timmons in view of Datta***

Claims 1-71 and 89-112 were rejected under 35 USC §103(a) over Timmons et al., EP 0462574 B2 (herein "Timmons"), in view of Datta et al., EP 123191 A1 (herein "Datta"), as in the previous action. The rejection suggests that it would be obvious to try the polymer composition of Datta for the application of Timmons based on the motivation of producing a material with increased tensile strength and improved process characteristics. Applicants respectfully traverse this rejection because: (A) as indicated in the prior response, there is no motivation to use a narrow MWD PP which is admixed with a second, different polymer also having a narrow MWD; and (B) the properties of the Datta composition do not lead the skilled artisan to select this composition, in fact they appear to be inconsistent with Timmons' desired porosity characteristic for medical fabrics. Also, there is no suggestion to make a fiber or fabric with the properties disclosed by Datta.

Timmons teaches that, in order to form the fine fibers and melt-blown webs described therein (to achieve small porosity), a single polypropylene must be cracked using peroxide (Timmons at page 2, lines 25-29) to form a modified resin having a narrower molecular weight

Attorney Docket No.: 2003B123

distribution (MWD) and a higher melt flow rate (MFR) than the starting polypropylene; see Timmons at page 2, line 46 through page 3, line 17. This modified resin has a MWD between 2.8 and 3.5, and an MFR between 800 and 5000 g/10 min (at 230 °C).

A skilled artisan would have concern about the result of the peroxide treatment on the second polymer of Datta (e.g., would there be interactions between the two polymers?), and would be dissuaded from choosing the polymer combination because a composition taught for injection molded articles (see Datta claim 14) suggests materials with no porosity. Similarly, improved tensile strength suggests an inability to achieve the extra fine fibers described by Timmons at page 4, lines 32-44. A skilled artisan would find the characteristics of dimensional stability (Datta page 7, line 45) and improved rigidity (Datta column 8, line 16) contrary to the material needed for the soft, flexible Timmons fabrics. Such characteristics suggest materials without porosity and without sufficient ability to form suitable fibers, fabric, etc.

Accordingly, the skilled artisan with Timmons before him would not be led to select a combination of high molecular weight distribution polymers, one of which is different from the typical polypropylene material of Timmons, wherein the mixture has characteristics not indicative of the properties needed by Timmons. Further, there is no suggestion to make a fiber or fabric with the properties of the Datta composition.

Furthermore, the materials of Timmons must be able to melt at an appropriately low temperature so as to fuse together the SMS laminate web layers. With such characteristics before the skilled artisan, one could only argue that the present invention is "obvious to try", at best. A skilled artisan would likely not try the Datta composition, but would rather tailor another single, preferably polypropylene, polymer. A skilled artisan would also likely not proceed with the Datta combination of materials when the resultant utility for fabrics is unknown and the peroxide treatment process result is unknown.

Contrary to the suggestion of obviousness, there is no motivation to produce a fabric or fiber with increased tensile strength and process characteristics. The need for such a material is still not shown in either reference. As indicated in the prior response, there must be a suggestion or motivation, either in the references themselves or in the knowledge generally available to one of skill in the art, to combine the cited references and there must be a reasonable expectation of

Attorney Docket No.: 2003B123

success. No such motivation or reasonable expectation of success could be found from the materials of Datta for the fabric of Timmons, or for any other fabric or fiber.

Timmons in view of Datta and Aratake

Claims 113-115 were rejected under §103(a) as unpatentable over Timmons and Datta, further in view of Aratake because it would have allegedly been obvious to use staple fibers in the production of the nonwoven fabric motivated by the desire of producing fabrics having a high strength and excellent hand feeling as taught by Aratake. Applicants respectfully traverse.

The deficiencies of Timmons and Datta have been addressed above. As previously stated, neither Timmons nor Datta is directed to fabrics, fibers, etc. having improved elastic properties, and neither reference provides the requisite motivation to make the claimed combination. Also, the skilled artisan would not have tried the polymer composition of Datta for the application of Aratake because the properties of Datta are displayed for their relationship to injection molded articles. There is no suggestion that the polymer composition of Datta met the soft feel, etc of Aratake when tensile strength is taught.

Similarly, Aratake does not disclose or suggest fabrics, fibers, etc. having elastic properties and therefore also does not provide a motivation to make the claimed combination. As a result, Aratake does not remedy the deficiencies of Timmons and Datta, and a *prima facie* case of obviousness has likewise not been established with respect to claims 113-115.

Reconsideration and allowance of the claims is respectfully solicited.

Respectfully submitted,

September 28, 2006

Date



Amy C. Trexler
Attorney for Applicants
Registration No. 51,531

ExxonMobil Chemical Co.
Law Technology
P.O. Box 2149
Baytown, Texas 77522-2149
Phone: 281-834-5519
Fax: 281-834-2495

USSN: 10/716,306

17 of 17

September 28, 2006